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5 GABRIEL PINEIDA,

6 Plaintiff,

7 v.

8 E. EVANS; CHARLES D. LEE;
9 KATHLEEN WALL; CARL
10 MILLNER; R. RODRIGUES; LOY
11 MEDINA; M. SEPULVEDA,

12 Defendants.

13 No. C 12-1171 WHA (PR)

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15 **ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION;
DIRECTING MARSHAL TO SERVE
DEFENDANT MILLNER;
INSTRUCTIONS TO CLERK**

16 (Docket Nos. 29, 30)

17 Plaintiff, an inmate at Salinas Valley State Prison, filed this pro se civil rights action
18 pursuant to 42 U.S.C. 1983. All but one defendant, Carl Millner, have been served and have
19 filed a motion to dismiss the complaint on administrative exhaustion grounds. Plaintiff has not
20 yet opposed that motion. Rather, he has filed a motion for a preliminary injunction and a
21 motion to have defendant Millner served at a new address.22 Prior to granting a preliminary injunction, notice to the adverse party is required. *See*
23 Fed. R. Civ. P. 65(a)(1). A temporary restraining order (“TRO”) may be granted without
24 written or oral notice to the adverse party or that party's attorney only if: (1) it clearly appears
25 from specific facts shown by affidavit or by the verified complaint that immediate and
26 irreparable injury, loss or damage will result to the applicant before the adverse party or the
27 party's attorney can be heard in opposition, and (2) the applicant's attorney certifies in writing
28 the efforts, if any, which have been made to give notice and the reasons supporting the claim

United States District Court

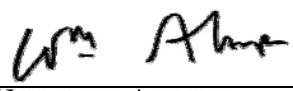
For the Northern District of California

1 that notice should not be required. *See* Fed. R. Civ. P. 65(b). Plaintiff has neither notified the
2 defendants of his request nor submitted the required certification of his efforts to do so and why
3 they have failed. In addition, in light of the evidence presented by defendants that plaintiff has
4 not exhausted his claims, there is no likelihood of plaintiff's success on the merits of his claims.
5 Accordingly, the motion for a preliminary injunction (docket number 29) is **DENIED**.

6 Plaintiff's motion to have defendant Millner served at a new address (dkt. 30) is
7 **GRANTED**. The clerk shall issue summons and the United States Marshal shall serve, without
8 prepayment of fees, a copy of the complaint in this matter with all attachments thereto, a copy
9 of the order of service and accompanying notice, and a copy of this order upon defendant Carl
10 Millner at La Vida Prairie Medical Group, 4455 West 117th Street, Suite #102, Hawthorne,
11 California 90250. Defendant Carl Millner shall comply with the provisions of the Order of
12 Service; he may also opt to join in the pending motion to dismiss filed by the other defendants.

13 **IT IS SO ORDERED.**

14 Dated: November 19, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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